

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 2. ADMINISTRATION

#### CHAPTER 10. DEPARTMENT OF ADMINISTRATION RISK MANAGEMENT SERVICES

#### PREAMBLE

1. **Sections Affected:**  
R2-10-101  
R2-10-108  
**Rulemaking Action:**  
Amend  
New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 41-621(Q)  
Implementing statute: A.R.S. § 41-621
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: John Kindree  
Address: Risk Management  
1818 West Adams  
Phoenix, Arizona 85007  
Telephone: (602) 542-1492  
Fax: (602) 542-2021
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
A.R.S. § 41-621 was amended in 1996 by the Legislature to include a provision that allows the Director of the Department of Administration to impose on any state department, agency, board, or commission a deductible of not more than \$10,000 per loss that arises out of a property, liability, or workers' compensation loss. The proposed rule establishes the conditions under which the deductible may be assessed and what actions the agencies may take to have its deductibles waived. The rule emphasizes prompt reporting, preventative actions, and other cooperative measures to be taken by the agencies with Risk Management's assistance to waive any deductibles and significantly reduce overall losses.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**  
The proposed rules will impact state agencies only and will not have any effect on consumers or small businesses. There may be some costs associated with the design, implementation, and training necessary to establish these various loss prevention programs. Risk Management will make funds available on a competitive basis from its grant program to assist state agencies in the development of qualified programs. Risk Management firmly believes that at least \$1,000,000 in loss reduction will be realized annually through the implementation of this program.

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**7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: John Kindree  
Address: Risk Management  
1818 West Adams  
Phoenix, Arizona 85007  
Telephone: (602) 542-1492  
Fax: (602) 542-2021

**8. The time, place, and nature of the proceedings for the adoption of the rule:**

An oral proceeding to take public comment on the proposed rules is scheduled as follows:

Date: July 16, 1997  
Time: 1:30 p.m.  
Location: Risk Management  
1818 West Adams  
Conference Room 3  
Phoenix, Arizona 85007

**9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
Not applicable.

**10. Incorporations by reference and their location in the rule:**  
Joint Legislative Budget Committee Rule 14 in R2-10-108.

**11. The full text of the rule follows:**

**TITLE 2. ADMINISTRATION**

**CHAPTER 10. DEPARTMENT OF ADMINISTRATION  
RISK MANAGEMENT SERVICES**

**ARTICLE 1. COVERAGE AND CLAIMS PROCEDURE**

R2-10-101. Definitions

25-26.No change.

R2-10-108. Deductibles and Waivers

26-27.No change.

27-28.No change.

**ARTICLE 1. COVERAGE AND CLAIMS PROCEDURE**

**R2-10-101. Definitions**

No change.

1. No change.
2. No change.
3. No change.
4. No change.
5. No change.
6. "Deductible means the amount of a loss that the agency will pay before Risk Management is obligated to pay anything.
- 6-7. No change.
- 7-8. No change.
- 8-9. No change.
- 9-10.No change.
- 10-11.No change.
- 11-12.No change.
- 12-13.No change.
- 13-14.No change.
- 14-15.No change.
- 15-16.No change.
- 16-17.No change.
- 17-18.No change.
- 18-19.No change.
- 19-20.No change.
- 20-21.No change.
- 21-22.No change.
- 23-24.No change.
- 24-25.No change.

**R2-10-108. Deductibles and Waivers**

**A. Liability judgments and claim settlements.**

1. Each agency shall be charged a deductible of \$10,000 on each court judgment of \$150,000 or more and on each claim approved for settlement by the joint legislative budget committee under J.L.B.C. rule 14, State Liability Claims - Procedures for Settlement when covered by Risk Management Self-insurance Fund (1994), incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
2. RM shall waive the deductible under the following conditions:
  - a. The agency provides a response to RM, in the form of a plan, as to the actions to be taken to eliminate or limit similar future risk of liability to the state; and
  - b. The plan is submitted as supportive detail to the agency's official rule 14 response, or is provided to RM within 60 days of the settlement date; and
  - c. RM approves the plan as reasonable and effective; and
  - d. The plan is implemented by the agency within 30 days of RM approval, and the agency provides brief monthly status reports on the essential elements of the plan's implementation.
3. If the agency fails to respond as outlined in subsection (A)(2), RM shall charge a deductible of \$10,000 on the subject judgment or claim as well as each subsequent claim resulting from that cause or exposure until all conditions of the waiver have been met.

**B. Workers' compensation claims.**

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1. Each agency shall be charged a deductible on each workers' compensation claim not reported within the statutory 10-day period of the occurrence being reported by the employee to their supervisor, or other agency representatives. The deductible amount of the claim shall be equal to 20% of the total claim, not to exceed \$10,000.
2. RM shall waive the deductible on all of the agency's workers' compensation claims reported after the statutory 10-day period, except those identified in subsection (C) if the agency meets the following criteria:
  - a. In calendar year 1998, the agency reports 50% of all occurrences of industrial injury or illness within 48 hours of being reported by the employee to their supervisor, or other agency representatives. The computation for the criteria will be on a rolling 12-month average, and the deductible will be applicable to claims filed during the individual months of 1999.
  - b. In a calendar year 1999, the agency reports 66% of all occurrences of industrial injury or illness within 48 hours of being reported by the employee to their supervisor, or other agency representatives. The computation for the criteria will be on a rolling 12-month average, and the deductible will be applicable to claims filed during the individual months of 2000.
  - c. In calendar year 2000, and all years forward, the agency reports 75% of all occurrences of industrial injury or illness within 48 hours of being reported by the employee to their supervisor, or other agency representatives. The computation for the criteria will be on a rolling 12-month average, and the deductible will be applicable to claims filed during the individual months of 2001 and all years forward.
- C. Loss prevention opportunities.
  1. Each agency shall be charged a deductible of not more than \$10,000 on each claim resulting from the exposure that is identified and agreed upon by the agency and RM to have the most significant opportunity for reduction through loss prevention actions. Each year the agency and RM shall identify and agree upon the most significant exposure to be selected under this plan.
  2. RM shall waive all deductibles against the agency, except those stated in subsections (A) and (B) under the following conditions:
    - a. The agency prepares a plan approved by its agency head to address the agreed upon exposure with specific loss prevention actions;
    - b. Submits the plan to RM for review by October 31 of the current fiscal year;
    - c. RM approves the plan as reasonable and effective;
    - d. The agency implements the plan; and
    - e. Submits a brief report to RM on a quarterly basis as to the essence of progress on the implementation of the plan.
  3. If the agency fails to meet the conditions of subsection (C)(2), a deductible of not more than \$10,000 shall be charged on each claim resulting from that significant cause or exposure until all conditions of the waiver have ever been met.
  - D. If disputes arise between RM and the agency pertaining to this Section, 1 or more meetings will be held at progressively upward, incremental management levels until a solution is reached with the Director of the Department of Administration.
  - E. RM shall have the right to waive any deductible to any agency for just cause. Just cause exists when the application of a deductible is not warranted due to the circumstances of the claim, or is otherwise in the best interests of the state.

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**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**PREAMBLE**

- | <b>1. Sections Affected</b> | <b>Rulemaking Action</b> |
|-----------------------------|--------------------------|
| R12-4-301                   | Amend                    |
| R12-4-303                   | Amend                    |
| R12-4-304                   | Repeal                   |
| R12-4-304                   | New Section              |
| R12-4-308                   | Amend                    |
| R12-4-318                   | Amend                    |
| R12-4-412                   | New Section              |
| R12-4-603                   | Amend                    |
| R12-4-606                   | Amend                    |
| R12-4-607                   | Amend                    |
| R12-4-608                   | Amend                    |
| R12-4-609                   | Amend                    |
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
- Authorizing statute: A.R.S. § 17-231(A)(1), (2), and (3)
- Implementing statutes: A.R.S. §§ 17-102 and 17-234 for R12-4-301  
A.R.S. § 17-102 for R12-4-303  
A.R.S. §§ 17-102, 17-235, and 17-301 for R12-4-304  
A.R.S. §§ 17-231(A)(4) and 17-211(D)(3)(4) for R12-4-308  
A.R.S. § 17-102 for R12-4-318  
A.R.S. §§ 17-306 and 17-238 for R12-4-412

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A.R.S. §§ 41-1003 and 41-1023 for R12-4-603  
A.R.S. §§ 17-340, 17-314, and 41-1061 *et seq* for R12-4-606  
A.R.S. §§ 41-1003 and 41-1062 for R12-4-607  
A.R.S. §§ 41-1003 and 5-311 for R12-4-608  
A.R.S. §§ 41-1005(A)(2) and 17-234 for R12-4-609

3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Susan L. Alandar, Administrative Services Manager  
Address: Game and Fish Department DO AS  
2221 West Greenway Road  
Phoenix, Arizona 85023-4399  
Telephone: (602) 789-3289  
Fax: (602) 789-3299

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

**R12-4-301. Restrictions for Taking Wildlife on Maricopa County Parks**

This rule prescribes restrictions for taking wildlife on Maricopa County Parks, in order to notify the public of conditions which allow hunting access to Maricopa County Parks. Methods for taking wildlife (hunting) are generally prescribed in R12-4-304 and R12-4-318. However, the Maricopa County Parks and Recreation Commission and the Arizona Game and Fish Commission entered into an agreement in 1976 with the objective *"To recognize hunting, fishing and trapping as practical methods for harvesting wildlife resources and to limit restrictions on such methods of harvest to recreational facilities and other developments where people are congregated and require safety precautions."*

The agreement then specifies restrictions necessary to meet this objective. Since these restrictions do affect the public, and since they are more restrictive than methods commonly prescribed in R12-4-304 and R12-4-318, they are properly prescribed by rule as well as within the agreement. The agreement remains in effect to date without change. However, the 5-year review of this rule indicated the rule does not uniformly meet its objective of notifying the public of restrictions. Many of Maricopa County's parks are now within incorporated city limits. These cities frequently have ordinances which do not allow the use of shotguns within city limits. Some also restrict archery. Since this is not addressed within the rule, the public may mistakenly believe that the rule overrides a city ordinance. Language is therefore proposed to clarify that this rule applies except where a park is within the limits of a city which has prohibited use of a specific method of take.

Another amendment is proposed to comply with a request received October 12, 1993, from the Maricopa County Parks Recreation Department as follows:

"Maricopa County recently completed a development project in Cave Creek Recreation Area. Prior to this project, the park consisted of just 275 acres of undeveloped land. The area has also been incorporated into the Town of Cave Creek."

"Because the park is north of the old New River Road, and west of Cave Creek Road, it is in Unit 21. We would request that this area be excluded from hunts in your publications as it is in violation of Town ordinances to discharge a firearm within their city boundary. It also conflicts with our hiking and riding trail activity, which is up significantly due to the recent development. Our County Parks Rules prohibit the discharge of firearms within 1/4 mile of any developed area or hiking/riding trail. Due to the shape of this park, there is no place where 1 can be more than 1/4 mile from 1 of our trails in the park. Commission Rule R12-4-301.2 needs to be amended by eliminating Cave Creek Recreation Area as 1 of the authorized hunt areas in Maricopa County Parks."

The problem has been addressed since receipt of the letter by virtue of not opening hunting seasons within the park. However, it is now proposed to remove reference to the Cave Creek Recreation Area from the rule to avoid misunderstanding by the public.

Other changes to the rule are intended to conform to current rule writing standards, and to update references to the now-named Maricopa County Recreation Services Department.

**R12-4-303. Prohibited Devices and Ammunition**

This Section prescribes devices and ammunition which are prohibited for taking any wildlife in Arizona. There is an obsolete cross-reference to R12-4-111 which must be removed. R12-4-111 was once the Commission's authority to the Department to handle wildlife; this was moved more appropriately to policy in 1990. That rule number now addresses the rule on the "Department identification number." Other amendments to the rule are intended to bring it to current rulewriting standards.

**R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles**

The purpose of this Section is to achieve desired levels of wildlife harvest and recreational opportunity by prescribing the methods for taking wild mammals, birds, and reptiles during general open seasons.

R12-4-304 is the basis for the Department's basic management plans for all wild mammals and birds; i.e., it is the concept which is applied to the majority of the state, with the aim to provide maximum recreational opportunity with moderate hunt success. (R12-4-318, Seasons, prescribes alternative hunt structures aimed at different levels of recreation and hunt success. This rule, R12-4-304, governs general seasons.)

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**Restricting method of take for buffalo on the Raymond Ranch Wildlife Area.** Buffalo are Arizona's most unique game animal in that they are raised and maintained on 2 state-operated wildlife areas, known as House Rock Wildlife Area and Raymond Ranch Wildlife Area. The boundaries for these areas are established in R12-4-109. Another rule, R12-4-306, prescribes the methods and rules of practice governing buffalo hunts held on these 2 properties.

Raymond Ranch is a small area surrounded with a "checkerboard" of public and private land. When buffalo escape the ranch, which has occasionally happened, they can escape onto private land where there is potential for damage to private property. For this reason Raymond Ranch is managed differently than House Rock, and it has always been required (in R12-4-306) that hunters on Raymond Ranch be accompanied by an Department employee.

It has always been the Commission's intent to provide the greatest scope of recreational opportunity to hunters, and in 1993 R12-4-304 was amended in response to a petition by the Arizona Bowhunters Association to allow the use of archery for buffalo. However, this has become a concern on Raymond Ranch. The use of archery, requires the hunter to approach very close to the buffalo; this method is also less likely to result in a swift and immediate dispatch of the animal. On Raymond Ranch, this can result in the buffalo escaping the ranch and creates a potential hazard to property and even public safety.

For these reasons, it is proposed to eliminate the use of archery as a lawful method of take on Raymond Ranch.

**Adding method of take for pheasant.** R12-4-304 currently allows only 2 methods of take for pheasant: archery and falconry. The rule proposal would include pheasant with all other upland game birds, therefore adding 3 additional methods of take: shotgun shooting shot, handguns shooting shot, and crossbow.

The historic restriction on method of take for pheasant resulted from complaints by Yuma County citrus growers that shot pellets from fired shotgun shells were being found in citrus fruit, making the fruit unsuitable for sale. At that time, almost all pheasants in Yuma County were found within citrus orchards. Other pheasant populations in the state were very small, so restricting the method of take statewide was the simplest solution to the problem.

Since that time, however, agricultural practices and cash crops have changed. Many citrus orchards are being removed and replaced with other agriculture, primarily vegetable crops, including lettuce. The change in crops has benefited pheasant and the population of birds is increasing. Many pheasants now occur in open fields planted with lettuce, which the birds eat, to the detriment of the farmers. Hunting with bow and arrow or falconry is not effective in lettuce fields because the area is too open and birds are able to elude hunters. Allowing more effective methods of take for pheasant will benefit hunters and farmers in these areas, and in areas where citrus is still a concern, the Commission can establish an archery or shotgun season within the framework of R12-4-318.

The delayed effective date of July 1, 1998, is designated within the rule to make the rule change coordinate with the publication of the Department's annual "hunt regulations", within which this rule is reprinted in its entirety. Other changes to R12-4-304 are editorial only and are proposed to make it consistent with current rule writing standards.

**R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks**

This Section prescribes procedures for inspections, check stations and roadblocks. The amendments eliminate portions of the rule in subsections (A) and (C) requiring persons to "give information as requested". This language generally violates constitutional protections against self-incrimination in that a person cannot be in violation of law for failing to speak and give information.

It must be understood, however, that Game and Fish personnel may continue to ask questions at check stations and while briefly detaining vehicles at a roadblock. With the rule change, it can no longer be misconstrued as a requirement of law that a person provide whatever information an officer requests.

Language in subsection (C) requiring individuals to provide information about specific hunting activities does remain unchanged. The concise explanatory statement issued at the time the rule was adopted suggests that for the hunts under subsection (C), the purpose for requiring the information was for biological reasons, and not so much for law enforcement. Also, for the hunts under subsection (C), the Department relies upon hunters coming forward with information about an animal, whereas individuals stopped at a check point or road block are more likely to feel pressure to provide information. For these reasons, the requirements in subsection (C) can remain unchanged.

No other changes to this rule are proposed, as it has previously been revised and approved by GRRC as meeting current rulewriting standards.

**R12-4-318. Seasons**

This Section prescribes special restrictions or requirements for various hunt structures to achieve management plans and goals for wildlife harvest while providing maximum wildlife oriented benefits to the public.

The "Juniors-only" hunt was developed to give youngsters the opportunity to hunt in their own structured hunt setting. Encouraging youngsters to hunt is essential to the future of wildlife management. These hunts have been very well-received by the public. However, the 5-year rules review report for this rule did find that this provision could be more effective and there is also some confusion related to enforcement. Many internal memoranda contained in the rules review file request that the rule be changed and/or clarified concerning age requirements. Junior hunters are applying for these hunts when they are 14, but they have turned 15 by the time the hunt begins, or they may even turn 15 during the hunt. The Department's evaluation has resulted in a proposal to allow youth to participate in "Juniors-only" hunts up to and throughout the calendar year of their 15th birthday. This will help the rule

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meet its objective (by expanding participation at no disadvantage to the agency or the resource) and should remove the confusion surrounding "birthday dates."

**R12-4-412. Tuberculosis Procedures for Cervidae Possessed by Special License**

The Game and Fish Commission and its administrative agent, the Game and Fish Department, is charged with management of all wildlife resources in the state of Arizona. One of the methods by which this is accomplished is by issuance of special licenses to hold wildlife in captivity. General provisions common to issuance of all of these special licenses is guided by Commission rule R12-4-409. Examples of the types of licenses that can be issued by pursuant to this rule are: R12-4-410 that allows stocking of aquatic wildlife into Arizona's waters and R12-4-413 governing game farms, which permits production of certain wildlife species in captivity. Another supportive rule to the Commission is R12-4-406, that lists animal species that are restricted from possession in the state without a special license issued by the Department. The purpose of this related body of rules (the Game and Fish Commission's Article 4, "Live Wildlife Rules" is to allow possession of live wildlife (which would otherwise be prohibited by A.R.S. § 17-306) while ensuring that Arizona's wildlife and livestock populations are protected from exposure to disease from imported wildlife, that they are protected from competition or predation from escaped animals possessed under these rules; and that human health and welfare are protected from these same issues.

It is proposed to incorporate the United States Department of Agriculture's *Uniform Rules for Elimination of Tuberculosis in Cervidae* into Article 4. This new Section would supplement R12-4-409(G) and (H). Incorporation of the USDA rule on elimination of tuberculosis will provide guidance to Department personnel who are charged with enforcement of the existing rule. This will protect the Department and any game farm licensee from capricious decisions on dealing with actions taken to identify or eliminate the presence of tuberculosis. This rule making action was initiated based upon a petition to do so by the Department of Agriculture. They advise that several other states have already adopted this rule. The proposed rule language duplicates and is sister to R3-2-501(C), which became effective March 5, 1997.

The proposed amendments to these rules result from the 5-year rule review conducted by the agency, which found that "house-keeping" changes need to be done to make the rules clear, consistent, and correct.

**R12-4-603. Oral Proceedings Before the Commission**

Proposed amendments would remove paragraph numbers from references to A.R.S. § 41-1023 because the legislature has renumbered the paragraphs in A.R.S. § 41-1023. Other changes are intended to bring the rule up to current rulewriting standards.

**R12-4-606. License Revocation, Denial of Right to Obtain License, and Civil Assessment Proceedings**

This Section provides for the conduct of Commission proceedings to revoke or suspend current game and fish licenses, deny the right to obtain future licenses, and order civil damages for the unlawful take or possession of wildlife. The heading of the rule is changed from "civil assessment proceedings" to "civil damages" to more accurately reflect the terminology used in statute. The Game and Fish Commission is authorized under A.R.S. § 17-314 to order recovery of civil damages for the loss of unlawfully taken wildlife. The statute does not use the term "assessment" and so that term is eliminated from the rule.

The proposed rule changes also distinguish the procedural requirements for a license revocation from an order for civil damages. The current structure of the rule suggests that the proceedings for license revocation and civil assessments require the same administrative due process. The Commission's authority to revoke or suspend licenses is a final agency decision affecting a person's rights or privileges. Under A.R.S. § 41-1061 *et. seq.* and 17-340, the Commission must provide notice and an opportunity for hearing before proceedings to revoke or suspend a license. The same requirement is not necessary for the civil damages order. The order for recovery of civil damages is not a final agency action because the Commission may not enforce its civil damages order, but must proceed with a civil action for recovery. While the Commission may afford a person an opportunity to testify concerning civil damages, the administrative process is separate for license revocations, and the rule should reflect this distinction.

The rule is revised to correct any misconception that a respondent who is subject to civil assessment only is entitled to the same procedural rights provided for license revocation. Other changes are made to bring the rule up to current rulewriting standards.

**R12-4-607. Rehearing or Review of Commission Decisions**

This Section prescribes criteria and procedures for rehearing or review of Commission decisions. The proposed rule changes the time to petition for rehearing from 10 days to 30 days. The change is required by recent amendments to Title 41 which require that appellants must have 30 days to petition for rehearing. Other changes are being made to bring the rule up to current rulewriting standards.

**R12-4-608. Appeal from Department Action**

This Section prescribes procedures for appealing the denial of licenses or permits or the establishment or removal of controlled-use markers. The amendment would remove an incorrect cross-reference to R12-4-517, which prescribes watercraft and boat engine restrictions on specific bodies of water. Since these restrictions are prescribed by rule, a person wishing to change those restrictions would not follow the procedures in R12-4-608, but rather the procedures in R12-4-601, containing procedures to petition the Commission for a rule change. Other changes are being made to bring the rule up to current rulewriting standards.

**R12-4-609. Adoption of Commission Orders**

This Section sets forth the procedures for adoption of Commission orders to ensure adequate public notice. It also contains the criteria for exceptions to the normal 20-day notice requirement. These exceptions are for specific circumstances only: for depredation hunts (established under a separate rule, R12-4-115); special seasons, which are open only to persons holding special license tags

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under A.R.S. § 17-346 and R12-4-120; and emergency seasons. The criteria for emergency seasons are contained within this rule, as well as certain provisions directly related to emergency seasons; the rule is therefore being retitled to reflect this.

The 1996 review of this rule (pursuant to A.R.S. § 41-1056) noted that the criteria for emergency seasons may not be broad enough to suit the public need. The agency has considered this carefully and decided to leave the criteria unchanged; it has proven workable and responsive as prescribed, and is based upon the criteria for emergency rulemaking. Since the Commission's orders to open, close or alter seasons or establish bag or possession limits for wildlife is exempted from the rulemaking process by A.R.S. § 41-1005(A)(2), it is correct and logical to parallel the emergency criteria for rulemaking as much as possible.

A statement is added to subsection (C) to clarify that the provisions of R12-4-104, R12-4-107, and R12-4-114 do not apply to emergency hunts. R12-4-104 and R12-4-114 establish applicant and Department procedures for the drawings for hunt permit-tags. R12-4-107 is the "bonus point rule" which grants applicants for tags for certain big game species to accumulate a "bonus point" for each unsuccessful entry in the big game drawing. Each bonus point grants the applicant an additional entry in subsequent big game drawings. There has never been an emergency hunt for a big game species, but, by their nature, emergency hunts would require a quick response to unusual circumstances unlikely to allow normal drawing processing. This is why the rule has always allowed selection of hunters from a special stand-by list established under R12-4-115. It has never been the intent or procedure to apply R12-4-104, R12-4-107, or R12-4-114 to this sort of emergency situation and the existing language about hunter selection supports this, but the agency is taking this opportunity to clarify this point. Administering emergency hunts in accordance with R12-4-104, R12-4-114, and R12-4-107 would greatly hamper the Department in its ability to respond to an emergency in a timely and effective manner.

The only other notable change to R12-4-609 relates to the dissemination of Commission orders to the public. The rule currently contains narrow language about how this is to be done. This is broadened to simply require that the content of Commission orders be published and made available to the public without charge. Since doing so is to the agency's benefit as well as the public's, the methods for public dissemination are constantly being streamlined and improved. The more general language will not hinder this improvement effort.

The rule is being restructured for clarity and otherwise revised to bring it to current rulewriting standards.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact:

**R12-4-301. Restrictions for Taking Wildlife on Maricopa County Parks**

Expected economic impact is minimal; changes are being made generally for the purpose of clarification and to alert the public to closure of the Cave Creek Recreational Area.

**R12-4-303. Prohibited Devices and Ammunition.**

No impact is expected from this housekeeping change.

**R12-4-304. Lawful Methods for Taking Wild Mammals, Birds and Reptiles**

This proposal would change the type of recreational opportunity for a very few persons. Farms in the Yuma area may benefit economically from change in method of take for pheasant.

**R12-4-308. Wildlife Inspections, Check Stations and Roadblocks.**

The public is generally cooperative with Game and Fish personnel at roadblocks and check stations, and rarely does an enforcement issue arise for failure to give information as requested. Therefore, the proposed rule change is not expected to have any impact.

**R12-4-318. Seasons**

This proposal should result in no added cost to the public or the agency, but may expand recreational opportunity for youth by a small degree, and will alleviate confusion regarding ability to participate in a juniors-only hunt when a birthday occurs just before or during the hunt.

**R12-4-412. Tuberculosis Procedures for Cervidae Possessed by Special License**

This Section would provide step by step guidance in the event there is evidence of disease in an animal possessed by a special licensee. The only special licenses currently authorizing possession of cervidae are for private game farms. There is no anticipated cost to the game farms as a result of this rule. Benefits include continuance of current disease-free status within the agriculture industry, including game farms.

**R12-4-603. Oral Proceedings Before the Commission**

No impact is expected from this housekeeping change.

**R12-4-606. License Revocation, Denial of Right to Obtain License and Civil Assessment Proceedings**

The Commission's interpretation of the existing rule is that the hearing refers only to the license revocation, and that the Commission has discretion to permit testimony concerning civil damages. The rule will not impact the procedure for license revocations and civil damage orders. While the public has not argued that the rule creates procedural rights not required by statute, the rule change should eliminate any suggestion that a person is entitled to an administrative hearing on civil damages.

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**R12-4-607. Rehearing or Review of Commission Decisions**

The proposed amendment will have very minor impact. Five days is not a significant increase in time, and the Commission receives very few petitions for rehearing.

**R12-4-608. Appeal from Department Action**

The proposed amendment will have very minor impact other than removing an incorrect cross-reference which has the potential for misleading the public.

**R12-4-609. Adoption of Commission Orders**

Proposed amendments will have little impact except to clarify the rule and give latitude to better serve the public.

**7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statements:**

**R12-4-301. Restrictions for Taking Wildlife on Maricopa County Parks**

Name: Raymond L. Kohls  
Region VI Law Enforcement Supervisor

Address: 7200 East University  
Mesa, Arizona 85207

Telephone: (602) 981-9309, ext. 211

Fax: (602) 255-3941

**R12-4-304 (Buffalo):**

Name: Tom Britt, Regional Supervisor

Address: Game and Fish Department, Region II  
3500 South Lake Mary Road  
Flagstaff, Arizona 86001-9342

Telephone: (520) 774-5045

Fax: (520) 779-1825

**R12-4-304 (Buffalo and Pheasant):**

Name: Tice Supplee, Game Branch Chief

Address: Game and Fish Department  
2221 West Greenway Road WMGB  
Phoenix, Arizona 85023

Telephone: (602) 789-3350

**R12-4-304 (Pheasant):**

Name: John Hervert, Wildlife Program Manager

Address: Game and Fish Department  
9140 East County 10½ Street  
Yuma, Arizona 85365-3596

Telephone: (520) 342-0091

Fax: (520) 343-0730



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**R12-4-318 (Juniors-only seasons):**

Name: Leonard L. Ordway, Field Operations Coordinator  
Address: Game and Fish Department FOHQ  
Field Operations Division  
2221 West Greenway Road  
Phoenix, Arizona 85023  
Telephone: (602) 789-3293  
Fax: (602) 789-3988

**R12-4-412. Tuberculosis Procedures for Cervidae Possessed by Special License**

Name: James C. deVos, Jr.  
Chief of Research  
Address: Game and Fish Department WMRS  
2221 West Greenway Road  
Phoenix, Arizona 85023  
Telephone: (602) 789-3247  
Fax: (602) 789-3918  
E-mail: Jdevos@gf.state.az.us

**R12-4-303, R12-4-308, R12-4-603, R12-4-606, R12-4-607, R12-4-608, and R12-4-609**

Name: Susan L. Alandar  
Administrative Services Manager  
Address: Game and Fish Department DOAS  
2221 West Greenway Road  
Phoenix, Arizona 85023  
Telephone: (602) 789-3289  
Fax: (602) 789-3299

**8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule; or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Written comments will be accepted at the above address until August 1, 1997. Public hearings to discuss this proposal will be held as follows:

Date: July 15, 1997  
Time: 7 p.m.  
Location: State Office Complex  
400 West Congress, Room 158  
Tucson, Arizona

Date: July 24, 1997  
Time: 7 p.m.  
Location: Game and Fish Department  
7200 East University  
Mesa, Arizona

Date: July 29, 1997  
Time: 6 p.m.  
Location: Game and Fish Department  
5325 North Stockton Hill Road  
Kingman, Arizona

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Date: July 29, 1997  
Time: 7 p.m.  
Location: Game and Fish Department  
2878 East White Mountain Boulevard  
Pinetop, Arizona

Date: July 29, 1997  
Time: 7 p.m.  
Location: Game and Fish Department  
9140 East County 10½ Street  
Yuma, Arizona

Date: July 30, 1997  
Time: 7 p.m.  
Location: Game and Fish Department  
3500 Lake Mary Road  
Flagstaff, Arizona

The Game and Fish Commission will hold an additional public hearing and may take final action to amend the rule on:

Date: September 13, 1997  
Time: 1:30 p.m.  
Location: Sinagua High School  
Mini Auditorium, Lecture Room A  
3950 East Butler Avenue  
Flagstaff, Arizona 86004

The Game and Fish Commission follows Title II of the Americans with Disabilities Act. The Commission does not discriminate against persons with disabilities who wish to make oral or written comments on proposed rulemaking or otherwise participate in the public comment process. Individuals with disabilities who need a reasonable accommodation (including auxiliary aids or services) to participate in the public comment process, or who require this information in an alternate form, may contact Susan L. Alandar at (602)789-3289 (Voice); 1-800-367-8939 (TDD); 2221 West Greenway Road, Phoenix, Arizona 85023-4399. Requests should be made as soon as possible so that the Arizona Game and Fish Department will have sufficient time to respond.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.
10. Incorporations by reference and their location in the rules:  
Not applicable.
11. The full text of the rules follows:

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**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE 3. TAKING AND HANDLING OF WILDLIFE**

- R12-4-301. ~~Restrictions for Taking Wildlife on Maricopa County Parks~~ Restrictions for taking wildlife on Maricopa County parks
- R12-4-303. ~~Prohibited Devices and Ammunition~~ Prohibited devices and ammunition
- R12-4-304. Lawful methods of taking wild mammals, birds and reptiles
- R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles
- R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks
- R12-4-318. Seasons

**ARTICLE 4. LIVE WILDLIFE RULES**

- R12-4-412. Tuberculosis Procedures for Cervidae Possessed by Special License

**ARTICLE 6. PRACTICE BEFORE THE COMMISSION**

- R12-4-603. Oral Proceedings Before the Commission ~~Oral proceedings before the Commission~~
- R12-4-606. Proceedings for License Revocation, Denial of Right to Obtain License, and Civil Damages ~~License revocation, denial of right to obtain license, and civil assessment proceedings~~
- R12-4-607. Rehearing or Review of Commission Decisions ~~Rehearing or review of Commission decisions~~
- R12-4-608. Appeal from Department Action
- R12-4-609. Adoption of Commission Orders; Emergency Seasons

**ARTICLE 3. TAKING AND HANDLING OF WILDLIFE**

- R12-4-301. ~~Restrictions for Taking Wildlife on Maricopa County Parks~~ Restrictions for taking wildlife on Maricopa County parks

- A. The lands and water lying within the boundaries of all Maricopa County Parks ~~are shall be open to hunting and trapping when a Commission order establishes an open season. Persons may use only the following methods of take: only under the following provisions:~~
  - 1. Archery hunting, ~~when lawful for the wildlife taken under R12-4-304 is permitted in season except in those areas closed by this rule or Commission order.~~
  - 2. Shotguns shooting shot, ~~when may be used for taking small game, predatory, furbearing, and nongame animals during quail season as established by Commission order in Lake Pleasant, White Tank Mountains, McDowell Mountain and Estrella Mountain Regional Parks and the Cave Creek recreational areas.~~
- 3-B. A person may use rifled firearms within the Maricopa County parks system only to take deer during deer seasons ~~Hunting with rifled firearms is prohibited at all times within the Maricopa County Parks system except that deer hunting may be permitted with such firearms in special hunts established for a limited time and number of permits. Such hunts may only be established by Commission order with concurrence of the Maricopa County Recreation Services Department Parks Commission.~~
- 4-C. A person shall not trap within the Maricopa County park system ~~except Trapping shall be prohibited in the Maricopa County Parks System except as permitted under the provisions~~

of A.R.S. § 17-239 or when it is determined by the Directors of Maricopa County Recreation Services Department Parks and the Game and Fish Department determine that predatory animal numbers need to be reduced in a park area because of a danger to the public or other wildlife.

- 5-D. ~~A person shall not hunt~~ No hunting is permitted within 1/4 one-fourth mile of any developed picnic area, boat ramp, shooting range, golf course, or other recreational area developed for public use.
- 6-E. ~~Persons~~ Any persons entering any part of the Maricopa County Park System for the purpose of hunting shall declare their intention of hunting at an entry station when entering the park, ~~if the park provided such park has an entry station in operation.~~
- E. This rule does not authorize a person to use a method of take which is prohibited by a city ordinance.

**R12-4-303. Prohibited Devices and Ammunition Prohibited devices and ammunition**

- A. In addition to the these prohibitions prescribed in at A.R.S. §§ 17-301(A) and 17-309(A)(6), (10), (19), and (21), the following devices and ammunition are prohibited for the taking of any wildlife in Arizona and a person shall not use or possess ~~any of the following be possessed while taking wildlife:~~
  - 1. No change.
  - 2. No change.
  - 3. Shotguns larger than 10 gauge; or shotguns capable of holding more than 2 shells in the magazine, unless plugged with a 1-piece filler limiting the magazine capacity to 2 shells, ~~which cannot be removed incapable of removal without disassembling the gun;~~
  - 4. No change.
  - 5. No change.
  - 6. No change.
  - 7. Pitfalls of greater than 5-gallon size, explosives, poisons, or stupefying substances except as permitted in A.R.S. § 17-239, ~~R12-4-111, or as allowed by a scientific collecting permit issued under pursuant to A.R.S. § 17-238. Persons using pitfalls as allowed under this rule shall remove the pitfalls when no longer in use and fill in any holes. Containers used for pitfalls shall be removed when no longer in use, and any holes shall be filled in.~~

**R12-4-304. Lawful methods of taking wild mammals, birds, and reptiles**

- A. Lawful methods for taking big game, subject to restrictions set forth in R12-4-318:
  - 1. All big game, except buffalo, may be taken with:
    - a. Centerfire rifles;
    - b. Muzzleloading rifles;
    - c. All other rifles using black powder or synthetic black powder;
    - d. Centerfire handguns;
    - e. Handguns using black powder or synthetic black powder;
    - f. Shotguns shooting slugs;
    - g. Bows having a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges.
  - 2. Buffalo may only be taken with:
    - a. Centerfire rifles;
    - b. Muzzleloading rifles;

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- e. All other rifles using black powder or synthetic black powder;
- d. Bows having a standard pull of 50 or more pounds, using arrows with broadheads of no less than 7/8 inch in width with metal cutting edges.
- 3. Deer, javelina and turkey may also be taken with crossbows having a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges.
- 4. Turkey and javelina may also be take with:
  - a. .22 rimfire magnum rifles;
  - b. 5 mm rimfire magnum rifles.
- 5. Turkey may also be taken with shotguns shooting shot.
- 6. The placing of any substance anywhere in the state in a manner intended to attract bears is permitted only as prescribed by R12-4-318.
- B. Lawful methods for taking small game, subject to restrictions set forth in R12-4-318:
  - 1. Cottontail rabbits and tree squirrels may be taken with:
    - a. Firearms not prohibited in R12-4-303.
    - b. Bow and arrow.
    - c. Crossbow.
    - d. Pneumatic weapons.
    - e. Slingshots.
    - f. Falconry.
  - 2. All upland game birds, except pheasant, may be taken with:
    - a. Bow and arrow;
    - b. Falconry;
    - c. Shotguns shooting shot;
    - d. Handguns shooting shot;
    - e. Crossbow.
  - 3. Pheasant may only be taken with:
    - a. Bow and arrow;
    - b. Falconry.
  - 4. Migratory game birds may be taken with:
    - a. Bow and arrow;
    - b. Crossbow;
    - c. Falconry;
    - d. Shotguns shooting shot, except that the possession of lead shot is prohibited while taking ducks, geese, swans, or coots, in areas designated by Commission order as nontoxic shot zones.
  - 5. Waterfowl may be taken from watercraft (except a sink-box), including those propelled by a motor, sail and wind, or both, when the motor has been completely shut off and/or the sail furled, and progress therefrom has ceased. The watercraft may be drifting as a result of current or wind action, beached, moored, resting at anchor, or may be propelled by paddle, oars, or pole. A watercraft under power may be used to retrieve dead or crippled waterfowl but no shooting is permitted while the watercraft is under way.
- C. Lawful methods for taking predatory and furbearing animals, subject to restrictions set forth in R12-4-318:
  - 1. All predatory and furbearing animals may be taken with:
    - a. Firearms not prohibited in R12-4-303;
    - b. Bow and arrow;
    - c. Crossbow.
    - d. Traps as authorized by R12-4-307.
  - 2. Artificial light may be used while taking raccoon; however, no lights used in taking raccoon shall be attached to or operated from a motor vehicle, including powerboats.
- D. Nongame mammals and birds may be taken by any means not prohibited in R12-4-303 or R12-4-318, except that foot hold

steel traps shall not be used. Nongame mammals and birds may be taken with artificial light subject to the following restrictions:

- 1. Firearms shall not be used at night;
- 2. Moveable artificial lights may be used but shall not be attached to or operated from a motor vehicle, including powerboats.
- E. Reptiles, except soft-shelled turtles, may be taken with any method not prohibited in R12-4-303 or R12-4-318. Reptiles may be taken with artificial light subject to the following restrictions:
  - 1. Firearms shall not be used at night;
  - 2. Moveable artificial lights may be used but shall not be attached to or operated from a motor vehicle, including powerboats.
- F. This rule is effective January 1, 1993.

**R12-4-304. Lawful Methods for Taking Wild Mammals, Birds and Reptiles**

- A. An individual may use the following methods to take big game. These methods are subject to the restrictions set forth in R12-4-318.
  - 1. To take antelope:
    - a. Centerfire rifles;
    - b. Muzzleloading rifles;
    - c. All other rifles using black powder or synthetic black powder;
    - d. Centerfire handguns;
    - e. Handguns using black powder or synthetic black powder;
    - f. Shotguns shooting slugs;
    - g. Bows having a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges.
  - 2. To take bear:
    - a. Centerfire rifles;
    - b. Muzzleloading rifles;
    - c. All other rifles using black powder or synthetic black powder;
    - d. Centerfire handguns;
    - e. Handguns using black powder or synthetic black powder;
    - f. Shotguns shooting slugs;
    - g. Bows having a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges;
    - h. Substances placed in a manner intended to attract bears are lawful only during seasons established under R12-4-318.
  - 3. To take bighorn sheep:
    - a. Centerfire rifles;
    - b. Muzzleloading rifles;
    - c. All other rifles using black powder or synthetic black powder;
    - d. Centerfire handguns;
    - e. Handguns using black powder or synthetic black powder;
    - f. Shotguns shooting slugs;
    - g. Bows having a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges.
  - 4. To take buffalo:
    - a. At the House Rock Wildlife Area:
      - i. Centerfire rifles;
      - ii. Muzzleloading rifles;
      - iii. All other rifles using black powder or synthetic black powder;

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- iv. Bows having a standard pull of 50 or more pounds, using arrows with broadheads of no less than 7/8 inch in width with metal cutting edges.
- b. At the Raymond Ranch Wildlife Area:
  - i. Centerfire rifles;
  - ii. Muzzleloading rifles;
  - iii. All other rifles using black powder or synthetic black powder.
- 5. To take deer:
  - a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs;
  - g. Bows having a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges;
  - h. Crossbows having a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges.
- 6. To take elk:
  - a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs;
  - g. Bows having a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges.
- 7. To take javelina:
  - a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs;
  - g. Bows having a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges;
  - h. Crossbows having a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges;
  - i. .22 rimfire magnum rifles;
  - j. 5 mm rimfire magnum rifles.
- 8. To take mountain lion:
  - a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs;
  - g. Bows having a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges.
- 9. To take turkey:
  - a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs;
  - g. Bows having a standard pull of 40 or more pounds, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges;
  - h. Crossbows having a minimum draw weight of 125 pounds, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges;
  - i. .22 rimfire magnum rifles;
  - j. 5 mm rimfire magnum rifles;
  - k. Shotguns shooting shot.
- B. An individual may use the following methods to take small game. These methods are subject to the restrictions in R12-4-318.
  - 1. To take cottontail rabbits and tree squirrels:
    - a. Firearms not prohibited in R12-4-303;
    - b. Bow and arrow;
    - c. Crossbow;
    - d. Pneumatic weapons;
    - e. Slingshots;
    - f. Falconry;
  - 2. To take all upland game birds:
    - a. Bow and arrow;
    - b. Falconry;
    - c. Shotguns shooting shot;
    - d. Handguns shooting shot;
    - e. Crossbow.
  - 3. To take migratory game birds:
    - a. Bow and arrow;
    - b. Crossbow;
    - c. Falconry;
    - d. Shotguns shooting shot, except that individuals in areas designated by Commission order as "nontoxic shot zones" shall not possess lead shot while taking ducks, geese, swans, or coots.
- C. Individuals may take waterfowl from any watercraft except a sinkbox, only under the following conditions:
  - 1. Any motor has been shut off, any sail furled, and any progress from motor or sail has ceased;
  - 2. The watercraft may be drifting as a result of current or wind action, beached, moored, resting at anchor, or may be propelled by paddle, oars or pole;
  - 3. An individual may use a watercraft under power to retrieve dead or crippled waterfowl but no shooting is permitted while the watercraft is underway.
- D. An individual may take predatory and furbearing animals by using the following methods. These methods are subject to restrictions in R12-4-318. An individual may use artificial light while taking raccoon but shall not attach lights to or operate lights from a motor vehicle, including powerboats.
  - 1. Firearms not prohibited in R12-4-303;
  - 2. Bow and arrow;
  - 3. Crossbow;
  - 4. Traps as authorized by R12-4-307.

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- E. An individual may take nongame mammals and birds by any method except foot-hold steel traps or methods prohibited in R12-4-303 or R12-4-318. An individual may use artificial light while taking nongame mammals and nongame birds but shall not use firearms at night, and shall not attach lights to or operate moveable lights from a motor vehicle, including powerboats.
- F. An individual may take reptiles, except soft-shell turtles, by any method not prohibited in R12-4-303 or R12-4-318. An individual may use artificial light while taking reptiles but shall not use firearms at night, and shall not attach lights to or operate lights from a motor vehicle, including powerboats.
- G. This rule is effective July 1, 1998.

**R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks**

- A. No change.
1. No change.
  2. No change.
  3. No change.
  4. Hunters shall personally check out after hunting in a season with a published check-out requirement, and shall present for inspection any wildlife taken, and display any license, tag or permit required for taking or transporting wildlife, ~~and give information requested concerning hunting activities.~~
  5. No change.
- B. The Director or Director's designee may establish vehicle roadblocks at specific locations when necessary. Vehicle roadblocks are not the same as wildlife check stations. Officers at vehicle roadblocks shall direct all vehicles at a roadblock to slow or stop. Any occupant of a vehicle at a roadblock shall present for inspection upon request all wildlife in possession, and display any license, tag, stamp, or permit required for taking or transporting wildlife ~~and give information as requested concerning hunting, fishing or trapping activities.~~ The Department shall ensure that:
1. No change.
  2. No change.
  3. No change.
  4. No change.
  5. No change.
  6. No change.
- C. No change.
1. No change.
  2. No change.
  3. No change.
- D. No change.

**R12-4-318. Seasons**

- A. No change.
- B. No change.
- C. No change.
1. No change.
  2. No change.
  3. No change.
  4. No change.
  5. No change.
    - a. No change.
    - b. No change.
    - c. No change.
    - d. No change.
  6. No change.
  7. No change.
  8. No change.
  9. No change.
  10. No change.

11. No change.
  12. An individual ~~may participate~~ participating in a "juniors-only hunt" up to and throughout the calendar year of their 15th birthday, ~~provided they shall be 14 years of age or under,~~ and meet the requirements of A.R.S. § 17-335.
  13. No change.
- D. This rule is effective January 1, 1998, 1997.

**ARTICLE 4. LIVE WILDLIFE RULES**

**R12-4-412. Tuberculosis Procedures for Cervidae Possessed by Special License**

Procedures for tuberculosis control and eradication for cervidae listed as restricted live wildlife in R12-4-406 shall be as prescribed in the USDA publication "Tuberculosis Eradication in Cervidae -- Uniform Methods and Rules" effective May 15, 1994, including 1995 amendments. This material is incorporated by reference, does not include any later amendments or editions of incorporated matter, and is on file with the Secretary of State. In addition, a copy may be ordered from the U.S.D.A. A.P.H.I.S. Veterinary Services, Cattle Diseases and Surveillance Staff, P. O. Box 96464, Washington, D.C. 20090-6464.

**ARTICLE 6. PRACTICE BEFORE THE COMMISSION**

**R12-4-603. Oral Proceedings Before the Commission Oral proceedings before the Commission**

- A. The Commission may, at its discretion or as required by the provisions of A.R.S. § 41-1023.B., allow oral proceedings on any matter. At oral proceedings:
1. No change.
  2. No change.
  3. No change.
  4. The Chair may ~~limit~~ limited the number of presentations or the time for testimony upon a particular issue, ~~and may prohibit irrelevant, immaterial, or repetitive testimony. Irrelevant, immaterial or repetitive testimony shall not be allowed.~~
  5. Technical rules of evidence ~~do~~ shall not apply to an oral proceeding, and no informality in any proceeding or in the manner of taking testimony ~~invalidates~~ shall ~~invalidate~~ any order, decision, or rule made, approved, or confirmed by the Commission.
- B. ~~The Commission authorizes~~ When necessary, pursuant to A.R.S. § 41-1023.D., the Commission may assign the Director to designate a hearing officer for oral proceedings to take public input on proposed rulemaking. The hearing officer ~~has~~ shall have the same authority as the Chair in conducting oral proceedings, as provided in this Section rule.

**R12-4-606. Proceedings for License Revocation, Denial of Right to Obtain License, and Civil Damages License revocation, denial of right to obtain license, and civil assessment proceedings**

- A. The Director may commence proceedings for the Commission to ~~revoke a license or deny a license take action on license revocation and denial of right to obtain license,~~ in any matter meeting the requirements ~~set forth~~ in A.R.S. § 17-340 and in ~~A.A.C. R12-4-605.~~ The Director may also commence proceedings for civil ~~damages assessment under~~ pursuant to A.R.S. § 17-314. Hearings ~~shall be conducted in accordance with the Administrative Procedure Act, A.R.S. § 41-1061 et seq.~~
- B. ~~The Commission shall conduct hearings concerning license revocations or license denial in accordance with the Administrative Procedure Act, A.R.S. § 41-1061 et seq.~~ The respondents shall limit their testimony ~~respondent's testimony shall~~

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be limited to any facts that show why the license should not be revoked or denied or a civil assessment imposed. Guilt or innocence of the violation charged shall not be an issue in the proceeding. The Commission may also permit a respondent to offer testimony or evidence relevant to the Commission's decision to order the recovery of civil damages or wildlife parts.

- C. The respondent waives shall waive the right to be heard if the respondent is not present at the hearing on the date, time and location noticed, and no further opportunity to be heard will be provided except under pursuant to A.A.C. R12-4-607; rehearing or review of Commission decisions. If the respondent does not wish to attend the hearing, the respondent may submit written testimony to written testimony may be submitted, which must be received by the Department before the hearing date designated in the Notice of Hearing. The Commission shall ensure that written testimony received at the time of the hearing is Written testimony shall be read into the record at the hearing.
- D. The Commission shall base its decision on decision of the Commission shall be based upon the officer's case report, a summary prepared by the Department, a certified copy of the court record, and any testimony presented at the hearing. The Department shall supply the respondent Respondent shall be supplied with a copy of all documents used by the Commission in reaching its decision.
- E. Any party may apply to the Commission for issuance of a subpoena to compel the appearance of any witness or the production of documents at any hearing or deposition. Not later than 10 calendar days before the hearing or deposition, the party shall file a written application setting forth the name and address of the witness, the subject matter of the expected testimony, the documents sought to be produced, and the date, time and place of the hearing or deposition. The Commission chair may issue the subpoenas.
1. A party shall serve a subpoena as in civil matters. An employee of the Department may serve a subpoena at the request of the Commission chair.
  2. Any party may request amendment to a subpoena at any given time prior to the time provided in this Section for filing an application. The amended subpoena shall be served as provided in subsection (E)(1).
- E. Any party desiring the issuance of a subpoena to compel the appearance of a witness or the production of documents at any hearing, or for a deposition of a witness who cannot be subpoenaed, shall file a written *ex parte* application setting forth the name and address of the witness, the matters concerning which it is expected to question the witness, the documents sought to be produced, and the time and place of the hearing. Such application shall be filed with the Department not less than 10 days in advance of the hearing. The Commission Chairman may issue the subpoena.
1. Subpoenas shall be served as in civil actions. Subpoenas issued at the request of the Chairman may be served by an employee of the Department.
  2. Subpoenas may be amended at any time prior to the date designated in subsection E and the amended subpoena shall be served as provided in subsection E-1.
- F. A license revoked by the Commission is suspended as of the date of the hearing, and revoked upon issuance of the findings of fact, conclusions of law, and order. If a person appeals the Commission's order revoking a license, the license is revoked after all appeals have been completed. A license denial is effective for the period determined by the Commission, beginning on the date of the hearing. Any license determined for revocation by the Commission is suspended as of the date of

the hearing, and revoked upon issuance of findings of fact, conclusions of law and order, or after all appeals have been completed. The right to secure license shall be denied for the period determined by the Commission, beginning on the issuance of findings of fact, conclusions of law and order, or after all appeals have been completed.

**R12-4-607. Rehearing or Review of Commission Decisions**  
**Rehearing or review of Commission decisions**

- A. For purposes of this Section the terms "contested case" and "party" are defined as provided in A.R.S. § 41-1001.
- A.B. Except as provided in subsection (G), any party in a contested case before the Commission may file a motion for rehearing or review within 30 calendar days after service of the decision. For purposes of this subsection a decision is served when personally delivered or mailed by certified mail to the party's last known residence or place of business. The party shall attach a supporting memorandum specifying the grounds for the motion. Except as provided in Subsection G, any party in a contested case before the Commission who is aggrieved by a decision rendered in such case may file a motion for rehearing with the Commission, not later than ten (10) days after service of the decision specifying the particular grounds therefore. For purposes of this Subsection a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at his last know residence or place of business.
- C. A party may amend a motion for rehearing or review at any time before the Commission rules upon the motion. An opposing party has 10 calendar days after service to respond to the motion or the amended motion. The Commission may require the filing of written briefs on any issue raised in a motion or response, and may provide for oral argument.
- B. A motion for rehearing under this Rule may be amended at any time before it is ruled upon by the Commission. A response may be filed within ten (10) days after service of such motion or amended motion by any other party. The Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C.D. The Commission may grant A rehearing or review of the Commission decision may be granted for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the Commission, its staff, agency or its hearing officer or of the prevailing party, or any order or abuse of discretion which deprived whereby the moving party was deprived of a fair hearing;
  2. Misconduct of the Commission, its staff, or its hearing officer, or the prevailing party;
  3. Accident or surprise which could would not have been prevented by ordinary prudence;
  4. Newly discovered material evidence which could would not, with reasonable diligence, have been discovered and produced at the original hearing;
  5. No change.
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceeding;
  7. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- D.E. The Commission may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (D)(C). The Commission's An order modifying a decision or granting a rehearing shall specify with particularity the ground or grounds for the order, on which the rehearing is granted, and



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the rehearing or review shall cover only those specified matters so specified.

~~E-E.~~ Not later than 10 days after a decision is rendered, the Commission may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted relief a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion. In either case the order modifying the decision or granting such a rehearing shall specify the grounds for the order therefor.

~~F-G.~~ When a motion for rehearing is based upon affidavits, the party shall serve the affidavits they shall be served with the motion. An opposing party may within 10 calendar days after such service serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Commission. The Commission may extend this period for no more than 20 calendar days for good cause shown or by written stipulation of the parties. The Commission may permit reply affidavits. Reply affidavits may be permitted.

~~G-H.~~ If in a particular decision the Commission makes specific findings that an immediate effective date for a the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Commission may issue decision may be issued as a final decision without an opportunity for rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, the party applying for judicial review shall do so any application for judicial review of the decision shall be made within the time limits prescribed in the Judicial Review of Administrative Decisions Act, A.R.S. § 12-901 *et seq.* permitted for applications for judicial review of the Commission's final decisions.

~~H.~~ For purposes of this Section the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.

~~I.~~ If any part of this Section conflicts with To the extent that the provisions of this Rule are in conflict with the provisions of any statute providing for rehearing of decisions of the Commission the such statutory provisions shall control govern.

**R12-4-608. Appeal from Department Action**

~~A.~~ An applicant for a license or permit which has been denied by the Department Upon denial of any license or permit by the Department, the applicant may appeal to the Commission. The applicant shall file the written appeal Such an appeal must be filed in writing in the office of the Director within 30 calendar days after the denial is mailed or delivered to the applicant.

1. The appellant shall prepare and sign the appeal form provided by the Department, describing The appeal shall be signed by the person making the request and shall set forth specifically the type of license or permit applied for and the reason for believing the license or permit should be issued.

2. No change.

~~B.~~ Any person, including any organization or agency, requesting that the Commission overturn a Department decision on the establishment or removal of controlled-use markers under pursuant to R12-4-522 or watercraft and boat engine restrictions pursuant to R12-4-517, shall; submit a petition as follows before such request may be considered by the Commission.

1. File a petition The petition shall be filed with the Game and Fish Department, Director's Office, 2221 West Greenway, Phoenix, Arizona, 85023, The petition shall be filed 30 calendar days prior to a scheduled Commission meeting in order to be submitted to the Commission at that meeting. Petitions received after that time will

shall be submitted by the Director to the Commission at the following regularly scheduled Commission meeting.

2. Submit petition A petition shall be submitted typewritten or computer-printed, double-spaced, on 8½" x 11" paper. The petitioner shall place the title shall appear at the top of the 1st page, and shall be: "Petition for Watercraft Restriction Amendment to the Arizona Game and Fish Commission" at the top of the 1st page, and provide the following information: The petition shall contain:

- a. No change.
- b. No change.
- c. No change.
- d. No change.

**R12-4-609. Adoption of Commission Orders; Emergency Seasons**

~~A.~~ Except as provided in subsection (B):

1. At least 20 calendar days prior to a meeting where the Commission will consider a Commission order, the Department shall issue a public announcement of the proposed Commission order to print and electronics media as designated in a list filed with the Secretary of State under pursuant to A.R.S. § 38-431.02.

2. No change.

3. The announcement shall also state that copies of proposed Commission orders will be available for public inspection at the Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa 10 ten calendar days prior to the meeting.

~~B.~~ The requirements of subsection (A) do not apply to Commission orders establishing:

1. Depredation hunts as prescribed in R12-4-115.

2. Special seasons for persons possessing special license tags issued under A.R.S. § 17-346 and R12-4-120.

3. Emergency seasons when the Commission adopts, amends, or repeals a Commission order for emergency reasons constituting an immediate threat to the health, safety, or management of wildlife or its habitat or public health or safety.

a. When the number of hunters to participate in an emergency big game season must be limited, hunters may be randomly selected from the list of applicants established pursuant to R12-4-115; the Department may advertise for and accept new applications as needed.

b. The restrictions in R12-4-309 do not apply to an emergency season.

c. The provisions of R12-4-104, R12-4-107, and R12-4-114 do not apply to an emergency season.

~~B.~~ When the Department finds that it is necessary to recommend the adoption, amendment, or repeal of a Commission order for emergency reasons constituting an immediate threat to the health, safety or management of wildlife or its habitat or public health or safety, it may do so at any duly noticed open meeting. Any big game season established for emergency reasons shall not be subject to the provisions of R12-4-309. When the number of hunters to participate in an emergency big game season must be limited, hunters may be randomly selected from the list of applicants established pursuant to R12-4-115; the Department may advertise for and accept new applications as needed. Hunt permits for emergency big game seasons are valid only for the emergency big game season for which issued.

~~C.~~ The Department shall publish the content of all Commission orders and make them available to the public without charge.

~~C.~~ The Department shall publish the content of Commission orders, except those orders adopted pursuant to Subsection C,



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~~at least once each year. The publications shall be available from all Department offices and provided to all license dealers for distribution to the public without charge.~~

- ~~D. The provisions of this rule shall not apply to depredation hunts established pursuant to R12-4-115 or special seasons established pursuant to R12-4-120.~~  
~~E. This rule is effective January 1, 1993.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION  
MOTOR VEHICLE DIVISION

PREAMBLE

1. **Sections Affected:**  
R17-4-216
- Rulemaking Action:**  
New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 28-202  
Implementing statute: A.R.S. § 28-313.01
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Randall X. Ramsey  
Address: Motor Vehicle Division Commercial Licensing Office  
1801 West Jefferson, Mail Drop 532M  
Phoenix, Arizona 85007-3224  
Telephone: (602) 255-8828  
Fax: (602) 407-3437
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
The Motor Vehicle Division is promulgating the rule to stagger registration periods for apportioned motor vehicles on a quarterly basis. Currently, there is 1 registration period for all apportioned vehicles. The new rule is necessary to spread the registration work flow and allow more timely processing of apportioned motor vehicle registration. The new rule is also necessary to allow companies to more closely align their fiscal year and cash flow management with a vehicle registration period.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**  
The implementation of the rule will have a negative impact on the agency in the implementation year due to deferral of fees and programming costs. After the implementation year, there will be no further costs and a benefit will be realized by a more even distribution of registration processing throughout the year. Companies with apportioned motor vehicles will have the ability to select a registration period that will be most compatible with their financial management.
7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**  
Name: Randall X. Ramsey  
Address: Motor Vehicle Division Commercial Licensing Office  
1801 West Jefferson, Mail Drop 532M  
Phoenix, Arizona 85007-3224  
Telephone: (602) 255-8828  
Fax: (602) 407-3437

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**8. The time, place, and nature of the proceedings for the adoption of the rule:**

Written comments will be accepted at the address listed above until 5 p.m. July 13, 1997. Public hearings to receive oral comments regarding this proposed rule will be held as follows:

Date: July 14, 1997  
Time: 1 p.m.  
Location: Flagstaff City Council Conference Room  
211 West Aspen  
Flagstaff, Arizona

Date: July 15, 1997  
Time: 11 a.m.  
Location: MVD Conference Room  
3565 South Broadmont  
Tucson, Arizona

Date: July 16, 1997  
Time: 1 p.m.  
Location: ADOT Auditorium  
206 South 17th Avenue  
Phoenix, Arizona

Individuals who wish to make oral comments by telephone may call (602) 255-8828 on July 16, 1997, from 3 p.m. to 5 p.m. The record will close at 5 p.m. on July 16, 1997.

The Department of Transportation follows Title II of the Americans with Disabilities Act. The Department of Transportation does not discriminate against persons with disabilities who wish to make oral or written comments on proposed rulemaking or otherwise participate in the public comment process. Individuals with disabilities who need a reasonable accommodation (including auxiliary aids or services) to participate in the scheduled hearings, or who require this information in an alternate form, may contact the Commercial Licensing Office, (602) 255-8828, as soon as possible so that the Department of Transportation will have sufficient time to respond.

To request accommodation to participate in the public comment period or obtain this notice in large print, Braille, or on audiotape, contact Randall X. Ramsey at (602) 255-8828, 1801 West Jefferson, Mail Drop 532M, Phoenix, Arizona 85007-3224.

**9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
Not applicable.

**10. Incorporations by reference and their location in the rule:**  
Not applicable.

**11. The full text of the rule follows:**

**TITLE 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION  
MOTOR VEHICLE DIVISION**

**ARTICLE 2. TITLES AND REGISTRATION**

**R17-4-216. Staggered Registration for Apportioned Commercial Vehicles**

**ARTICLE 2. TITLES AND REGISTRATION**

**R17-4-216. Staggered Registration for Apportioned Commercial Vehicles**

**A. Definitions. In this Section, unless the context otherwise requires:**

1. "Apportioned commercial vehicle" means a commercial motor vehicle that is subject to the apportioned registration provisions of A.R.S. § 28-225.
2. "Commercial vehicle" has the same meaning as in A.R.S. § 28-221.

3. "Director" means the Assistant Director for the Motor Vehicle Division of the Department of Transportation or the Assistant Director's designee.

4. "Division" means the Motor Vehicle Division of the Department of Transportation.

5. "Expiration date" means the last day of the month and year in which a vehicle registration expires.

6. "Fleet" means 1 or more apportioned commercial vehicles.

7. "Registration period" means the time frame in which a vehicle registration is valid.

**B. Commencing on the effective date of this rule, the Division shall give the owner of a previously registered fleet the opportunity to select 1 of the following 4 registration periods and associated expiration dates for the fleet. The registration period and expiration date shall be mutually agreed to by the fleet owner and the Director. The registration periods are:**

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1. Register for January 1998 to March 1998; then register again for April 1998 to March 1999; and register each March thereafter.
2. Register for January 1998 to June 1998; then register again for July 1998 to June 1999; and register each June thereafter.
3. Register for January 1998 to September 1998; then register again for October 1998 to September 1999; and register each September thereafter.
4. Register for January 1998 to December 1998; then register again for January 1999 to December 1999; and register each December thereafter.
- C. An owner shall not stagger registration by vehicle within a fleet.
- D. The Division shall not provide a grace period for late registration or late payment of fees.
- E. The Division shall assign a registration period to a newly registered fleet. The expiration date for the assigned registration period shall be the last day of the furthest calendar quarter, not exceeding 12 months, from the date of the initial registration.
- F. If an owner replaces a vehicle within a fleet, the Division shall give credit for registration fees paid up to the amount of the registration fees required on the replacement vehicle. There shall be no refund for any excess credit of registration fees.
- G. If an owner transfers a vehicle between fleets, the Division shall give credit for a registration fee paid that is based upon the original fleet registration period. There shall be no refund for any excess credit of registration fees.
- H. An owner shall maintain the registration period selected or assigned for 3 consecutive registrations.

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**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**

**CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION**

1. **Sections Affected**

R19-3-201	Amend
R19-3-202	Amend
R19-3-203	Amend
R19-3-204	Amend
R19-3-205	Amend
R19-3-206	Amend
R19-3-207	Amend
R19-3-208	New Section
2. **The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 5-504(B)

Implementing statute: A.R.S. § 5-504(B)
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Mr. Jody Spicola, Executive Director
Address:	Arizona State Lottery Commission 4740 East University Phoenix, Arizona 85034
Telephone:	(602) 921-4514
Fax:	(602) 921-4488
4. **An explanation of the rule, including the agency's reason for initiating the rule:**

R19-3-201 through R19-3-208 is required by A.R.S. § 5-504 and prescribes the requirements and procedures for Arizona retailer businesses to obtain a license to sell Lottery game products, display promotional materials, requirements for the sale and payment of instant games and on-line games, and retailer conduct. The rules establish procedures for revocation, suspension or renewal of retailer licenses, hearing procedures, and Lottery conducted compliance investigations. This amendment will also provide consistency in the language of the text and, further, to make the rules clear, concise and understandable.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**
  - A. The Arizona State Lottery.

There will not be a change in the manner in which the Lottery performs retailer related functions. Additional costs to the Lottery for this Article are minimal and are included in the agency's appropriated budget. Retailer related costs include background investigations for licensing, delivery of tickets, supplies and point-of-sale promotional items, installation of telephone lines for the on-line terminal and monthly communication fees for each retailer selling on-line games, and administrative costs collecting sales revenue and providing customer service to retailers.

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- B. *Political Subdivisions.*  
Political subdivisions of this state are not directly affected by the Retailer rule.
- C. *Businesses Directly Affected by the Rulemaking.*  
Businesses affected by this rule are Lottery retailers who sell Lottery game products to the public. The rule provides for licensing requirements, retailer conduct in selling and redeeming Lottery tickets, and compensation paid to retailers for Lottery services. Lottery retailers earned over \$15 million in commissions last fiscal year. Cost of selling Lottery products is minimal. Tickets do not require special storage, have almost unlimited shelf-life, do not spoil, and do not require additional employees to handle the product.
- D. *Private and Public Employment.*  
Private and public employees are not directly affected by this rule.
- E. *Consumers and the Public.*  
There are no costs to the public associated with the amendment of this rule.
- F. *State Revenues.*  
License fees and revenue generated by the sale of Lottery game tickets are distributed to those programs funded with Lottery monies. The Lottery collected \$6,800 in retailer license fees in fiscal year 1996. Transfers to State of Arizona funds were in excess of \$85 million.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Mr. Jody Spicola, Executive Director

Address: Arizona State Lottery Commission  
4740 East University  
Phoenix, Arizona 85034

Telephone: (602) 921-4514

Fax: (602) 921-4488

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: July 25, 1997

Time: 10 a.m.

Location: Arizona State Lottery  
4740 East University  
Phoenix, Arizona 85034

Nature: Oral Proceeding (Close of the record is 5 p.m., M.S.T., Thursday, July 24, 1997, for written comments and at the end of the oral proceeding for verbal comments.)

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

10. **Incorporation by reference and their location in the rules:**

Not applicable.

11. **The full text of the rules follows:**

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**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**

**CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION**

**ARTICLE 2. RETAILERS**

Section

- R19-3-201. Retailer's Application and License
- R19-3-202. Special Retailers
- R19-3-203. Direct Sales by Lottery
- R19-3-204. Revocation, Suspension, or Renewal Denial of Retailer's License
- R19-3-205. Display of Promotional Material
- R19-3-206. Instant Game Requirements
- R19-3-207. On-Line Game Requirements
- R19-3-208. Compliance Investigations

**ARTICLE 2. RETAILERS**

**R19-3-201. Retailer's Application and License**

- A. Application. Any person interested in obtaining a license to sell lottery tickets shall:
1. ~~File an application for a retailer's license with the Director on a application form provided by the Lottery. The form shall include the following: Submit to the Director a verified application on forms prescribed by the Director, containing the following information.~~
    - a. ~~Name. If the applicant is an individual, the applicant's name, address, and phone number of the business;~~
    - b. ~~If the applicant is a partnership, the names, addresses, and phone numbers of all partners with a designation of any limited partners.~~
    - c. ~~If the applicant is a corporation, an association or any other organization, the names, addresses, and phone numbers of the president, vice-president, if any, secretary and treasurer or the functional equivalent of such officers, the directors, and the owners of 10% or more of the stock or beneficial interest.~~
    - d. ~~If the applicant is a corporation, evidence that the corporation is in good standing with the Arizona Corporation Commission.~~
    - e. ~~The address or location of the applicant's place of business and the mailing address if it is different from the place of business.~~
    - f. ~~The applicant's current transaction privilege tax license number issued pursuant to A.R.S. § 42-1305.~~
    - g. ~~Proof that the applicant has complied with the statutes and rules governing workers' compensation insurance.~~
    - h. ~~Proof that the applicant has complied with the statutes and rules governing the American's with Disabilities Act.~~
    - b. ~~Documentation on each controlling agent of the business;~~
      - e-i. ~~Marketing and sales forecast information;~~
      - d-i. ~~Names and addresses of 3 business references;~~
      - e-k. ~~Financial relationship and any outstanding debt with the state of Arizona or any of its government subdivisions;~~
      - f. ~~Name of insurance carrier and policy details;~~
      - g-l. ~~Authorization agreement for electronic fund transfer;~~
      - h. ~~Statement of 6 month probation period for meeting average weekly sales for both the instant and the On-line games.~~
  2. Submit a nonrefundable application fee of \$25.00.

- B. To obtain or renew a license, each person shall be of good character and reputation. Lack of good character and reputation may be established by showing that a person has committed any act which, if committed or done by any licensed retailer, would be grounds for suspension or revocation of a license or by showing that the person was named on any business license in another state that was suspended or revoked.
- C. To obtain a license a person shall not have had a license refused or revoked within 1 year prior to the person's application, or not have engaged in selling lottery products without 1st having been licensed within 1 year of the person's application.
- D. No license shall be issued to a minor, to any partnership in which 1 of the partners is a minor, or to any corporation in which a corporate officer is a minor.
- B-E. Residency requirement. The following are eligible to apply for a retailer's license:
  1. Residents of Arizona;
  2. Corporations incorporated in Arizona or authorized to do business in Arizona;
  3. Partnerships in which at least 1 of the general partners resides in Arizona;
  4. Unincorporated business which are authorized to do business in Arizona.
- E. Upon receipt of the fee required and an application furnishing complete information as required by the Director, the Director shall notify the applicant within 60 days from the date of the filing of a complete application of the action taken on the application. The Director shall notify the applicant within 10 days if the application is not considered complete stating the requirements necessary to complete the application. The applicant shall have 15 days to provide the required documents or information. The 60-day review period shall be suspended between the date the request for additional information is issued and the date of receipt of the additional information or 15 days after request, whichever is earlier. By mutual written agreement, the Director and the applicant may extend the time for review, but in no case shall this time exceed 60 days. If the Director determines that an applicant is qualified to hold a license in accordance with the provisions of this Chapter, the Director shall issue a license to the applicant permitting the applicant to engage in business as a lottery retailer under the terms of this Chapter.
- G. The Director has discretion to license a qualified applicant to sell any 1 of the Lottery's game products or any combination thereof. The Director may require an applicant to sell 1 or more Lottery products as a condition of selling any other Lottery product. A Lottery license issued authorizes the licensee to sell only those type of Lottery products specified on the license.
- H. Licenses issued under this Chapter and renewals thereof shall be signed by the Director or the Director's designated representative and by the licensee. The license shall be nontransferable, and satisfactory evidence of possession shall be exhibited by the licensee upon demand. The license number appearing on any licenses held by the licensee shall be posted in a conspicuous place on premises where lottery products are sold. A violation of the provisions of this subsection relating to posting and placement of license numbers shall be, at the discretion of the Director, grounds for disciplinary action under the provisions of this Chapter.

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- I. As a condition of licensure, each licensee agrees to release, indemnify, defend, and hold harmless, the Arizona Lottery, its directors, officers, agents, and employees, from and against any and all liability, damage, cost, claim, loss, or expense, including, without limitation, reasonable attorney's fees and disbursements, resulting from or arising by reason of loss of use, temporary or permanent cessation of Lottery equipment or terminal operations.
- J. If an application for a license is denied for any reason provided in this Chapter, the application fee paid by the applicant shall be forfeited and transferred to the state treasurer for deposit. A reapplication for a license shall be accompanied by the fee fixed by this Chapter. If a written notice granting or denying a license is not provided to the applicant within 60 days of notice of receipt of a completed application or within the time frame agreed upon in a written extension of time for review, all fees charged for reviewing and acting on the application shall be refunded to the applicant within 30 days.
- C. Eligibility for license. Before issuing a retailer's license, the Lottery shall consider in addition to the factors specified in A.R.S. § 5-512(A):
1. The anticipated volume of average weekly sales, in comparison with the minimum standard of 250 instant tickets and 400 On-line tickets per week;
  2. The validity of the information supplied in the application for a retailer's license;
  3. The applicant's indebtedness to the state of Arizona or any other local, state, or federal government.
- D. K. Duration of license. A retailer's license issued under this Chapter:
1. Shall remain in effect until the specified expiration date; Shall be suspended on the day following its biannual renewal date by operation of law. An application for renewal of any current license addressed to the Director, accompanied by the required \$25 fee, and received by the Director or deposited in the United States mail postage prepaid on or before the bi-annual renewal date, shall authorize the licensee to operate as a retailer until actual issuance of the renewal license. The Director may refuse to renew a license if a licensee or person has committed or been found guilty of any act listed in R19-3-204.
  2. Which has been suspended by operation of law for failure to renew may be activated and renewed within 1 year of its suspension by filing the required application and payment of the application fee in the amount provided for renewal in this Chapter in addition to a \$25 fee. When a license has been suspended for 1 or more years for failure to renew, a new application for license must be made and a new license issued in accordance with this Chapter.
- 2-3. Is subject to termination by the Director in accordance with the provisions of this Chapter prior to the expiration date.
- E. L. Nontransferability of license.
1. A retailer's license issued pursuant to this Chapter is not transferable by the retailer. If the business to which a license is issued or the ownership substantially changes, the Director reserves the right to terminate the retailer's license. The Director shall be notified in writing by the retailer at least 10 days prior to any proposed business change or substantial change in ownership. A substantial change in ownership means a transfer of equity that creates a shift in the controlling interest of any business licensed pursuant to this Chapter.
  2. If a retailer's business is sold, terminated, or the ownership substantially changes, the retailer shall notify the Director in writing of the date of sale, termination, or sub-

stantial ownership change at least 10 days prior to the transaction and shall surrender the Lottery license to the Director.

- a. A substantial change in ownership means a transfer of equity that creates a shift in the controlling interest of any business licensed pursuant to this Chapter.
- b. The Director reserves the right to terminate the retailer's license.

2-3. Any change of business location shall be reported to the Director at least ten 10 days prior to the effective date of the change.

- F. ~~An applicant may request a hearing regarding denial of application for a retailer's license within 15 days of receipt of a license denial. The hearing shall be conducted in accordance with the provisions of A.R.S. Title 41, Chapter 6, Article 6 and R-19-3-204(B), (D), and (E).~~

**R19-3-202. Special Retailers**

- A. Eligibility for special retailer's license. This license is issued subject to conditions determined by the Director. These conditions shall include:
1. Length of license period;
  2. Hours or days of sale;
  3. Location of sale;
  4. Specific persons who sell lottery tickets;
  5. Specific sporting, charitable, social, or other special events where lottery tickets may be sold;
  6. Which specific Lottery game products may be sold.
- B. Restrictions applicable to special retailers. Persons holding special retailer's licenses shall be subject to all provisions of the Act and this Chapter.

**R19-3-203. Direct Sales by Lottery**

The Lottery may sell lottery tickets at its main office, or at any branch it establishes in the state, or at any special event.

**R19-3-204. Revocation, Suspension, or Renewal Denial of Retailer's License**

- A. Each retailer's license may be revoked, suspended or its renewal denied by the Director for any of the following reasons:
1. ~~The retailer's application for a license contains false or misleading information.~~
  - 2-1. The retailer violates any of the provisions of the Act or this Chapter.
  2. Sells a ticket to any person under 18 years old.
  3. The retailer's average weekly sales of tickets for the:
    - a. Sale of Instant game tickets are less than 250 350 per week ~~for the preceding game;~~
    - b. On-line game are less than 400 500 per week for the preceding 10-week period.
  4. The retailer's business address is changed without notification to the Director as required in this Chapter.
  5. The retailer commits an act which impairs its reputation for honesty and integrity.
  6. The retailer does not display lottery point-of-sale material in a manner which is readily visible and available to the public in accordance with R19-3-205.
  7. The retailer does not make purchase of lottery tickets convenient and readily accessible to the public.
  8. The retailer provides to the Lottery a statement, representation, warranty, or certificate that is determined by the Lottery to be false, incorrect, or incomplete.
  9. The retailer has 3 payments returned to the Lottery for insufficient funds in a 12-month period.
  - 9-10. The retailer becomes insolvent, unable or unwilling to pay its debts, or is declared bankrupt.

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10-11. The retailer or any of its officers, employees or agents is:

- a. ~~Indicted for or~~ Is convicted of a felony or any crime involving moral turpitude, or gambling, theft, or fraudulent schemes.
- b. ~~The~~ Is the subject of any order, judgment, or decree of any federal or state authority barring, suspending, revoking or otherwise limiting its right to engage in any business, practice, or activity.

12. Subsequent facts are discovered which if known at the time of issuance of a license or the renewal of a license would have been grounds to deny issuance or renewal of a license.

B. The Director may on the Director's own motion, and shall on the written complaint of any person, investigate the acts of any licensee within this state and may temporarily suspend, with or without imposition of specific conditions in addition to imposing bond requirements, or permanently revoke any or all licenses issued under this Chapter if the holder of the license issued pursuant to this Chapter is guilty of or commits any of the acts or omissions set forth in subsection (A).

B.C. Procedure for hearings. The retailer may request a hearing regarding the proposed revocation, suspension, or renewal denial of a license, ~~if future delivery of tickets is withheld or the On-line Lottery terminal is summarily inactivated.~~ The hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 6. ~~If requested by the retailer in writing, a hearing shall be held within 15 days following receipt of the request.~~

1. ~~The hearing shall be conducted by a hearing officer in an informal manner without formal rules of evidence or procedure.~~
2. ~~The hearing officer may:~~
  - a. ~~Hold prehearing conferences to:~~
    - i. ~~Settle, simplify, or identify the issues in a proceeding;~~
    - ii. ~~Consider other matters that may aid in the expeditious disposition of the proceeding;~~
  - b. ~~Require parties to state their positions concerning the various issues in the proceeding;~~
  - c. ~~Require parties to produce for examination those relevant witnesses and documents under their control;~~
  - d. ~~Rule on motions and other procedural items pending before the officer;~~
  - e. ~~Regulate the course of the hearing and conduct of participants;~~
  - f. ~~Establish time limits for submission of motions or memoranda;~~
  - g. ~~Impose appropriate sanctions against any person failing to obey an order under the following procedures;~~
    - i. ~~Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;~~
    - ii. ~~Excluding any or all testimony of an unresponsive or evasive witness.~~
    - iii. ~~Expelling the person from further participation in the hearing;~~
  - h. ~~Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice;~~
  - i. ~~Administer oaths or affirmations.~~
3. ~~A transcribed record of the hearing shall be made available at cost to any requesting party.~~

4. ~~The hearing officer shall make a recommendation to the Director, within 10 days of the hearing date, based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.~~

5. ~~The decision of the Director shall be made within 10 days from the time that the recommendation is received from the hearing officer. The Director shall proceed in 1 of the following ways:~~

- a. ~~Accept, modify, or reject the hearing officer's recommendation in whole or in part;~~
- b. ~~Return the matter to the hearing officer with instructions;~~
- c. ~~Make any other appropriate disposition.~~

6. ~~The Director's decision shall be presented or mailed to all parties. Any party adversely affected may file an appeal with the Commission within 10 days of receipt of the decision.~~

C.D. Procedure for filing an appeal with the Commission:

1. Any appeal from the final decision of the Director shall be filed with the Lottery Commission within ten 10 days of receipt of the decision. The filed appeal shall contain the following:
  - a. A copy of the decision of the Director;
  - b. The basis for the precise factual or legal error in the decision of the Director from which the appeal is taken.
2. ~~The Lottery shall notify interested parties of the appeal within 5 days after the appeal is filed.~~
- 3-2. ~~Any interested party~~ The party appealing the decision of the Director may file a written brief stating its position on the appeal within ten 10 days after receipt of the notice.
- 4.3. The Commission may provide for oral argument.
- 5-4. The Commission's ruling on the appeal shall be on the record.

D. ~~Procedure for rehearing. Any party who is aggrieved by a decision of the Commission to revoke, suspend, or deny renewal of a license may file a written request for rehearing of the decision specifying the precise factual and legal grounds contained in paragraph (5), subparagraph (c) of this subsection.~~

1. ~~The request for rehearing shall:~~
  - a. ~~Be filed with the Lottery within ten days of the decision of the Commission;~~
  - b. ~~Include any applicable supporting affidavits;~~
  - c. ~~Be clearly designated as a "Request for Rehearing."~~
2. ~~The Lottery shall notify interested parties of the request for rehearing within 5 days after it is filed.~~
3. ~~Any interested party may file a response, including any opposing affidavits, within 5 days of receipt of the notice.~~
4. ~~Any argument not raised in the request or in a response is waived.~~
5. ~~If helpful to the Commission it may:~~
  - a. ~~Require the filing of written briefs.~~
  - b. ~~Provide for oral argument.~~
  - c. ~~Grant a rehearing of the decision for any of the following causes:~~
    - i. ~~Irregularity in the appeal to the Commission or an abuse of discretion by the Commission, depriving the requesting party of a fair appeal;~~
    - ii. ~~Misconduct of the Commission, its staff, or any party;~~
    - iii. ~~Accident or surprise that could not have been prevented by ordinary prudence;~~
    - iv. ~~Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced in the appeal;~~



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- v. Excessive or insufficient penalties;
  - vi. Error in law, including the admission or rejection of evidence, occurring in the appeal;
  - vii. Evidence that the decision on appeal is not justified by the evidence or is contrary to law.
6. ~~The Commission's decision concerning a request for rehearing shall:~~
- a. ~~Be in writing;~~
  - b. ~~State the basis of the decision.~~
7. ~~A decision granting a rehearing shall specify:~~
- a. ~~The grounds on which the rehearing is granted;~~
  - b. ~~The date, time, and place of the rehearing.~~
8. ~~Any rehearing shall cover only those matters specified in the decision granting the hearing.~~
9. ~~The Commission, within the time for filing a request for rehearing under this rule, may on its own initiative order a rehearing of the decision for any reason for which the Commission may have granted a rehearing on request of a party.~~
- E. Any final decision of the Commission shall be subject to judicial review pursuant to A.R.S., Title 12, Chapter 7, Article 6 by any party to the appeal before the Commission action, and the complaint seeking review shall be filed with the Superior Court in Maricopa County and served on the Commission within the time prescribed pursuant to A.R.S. § 12-904.
- F. Termination of a retailer's license.
- 1. Sales shall not be allowed by the retailer from the date of receipt of the notice of termination.
  - 2. The retailer shall appear before the Director on a date designated by the Director for the purpose of rendering a final lottery accounting and surrendering his surrender the retailer's license together with all other lottery property to the Director's representative.
  - 3. If any retailer fails to settle its financial account and surrender its retailer's license together with all other lottery property on or before the designated date, the Director shall immediately take steps to impose the penalties and to exercise the enforcement powers provided for in the Act and this Chapter.

**R19-3-205. Display of Promotional Material; Compliance Investigations**

**A. Requirements.**

Each retailer shall prominently display and maintain a minimum of 3 different point-of-sale Lottery promotional material materials. Promotional materials may include, but not limited to, change mats, mobiles, strip banners, table tents, brochures, or stickers.

**B. Investigation of premises.** Each retailer shall allow investigations during business hours by authorized investigators of the Lottery to determine whether the retailer is complying with the provisions of the Act and this Chapter.

**R19-3-206. Instant Game Requirements**

- A. Distribution and payment. Tickets for each game shall be distributed to retailers and paid for in the following manner:
- 1. Prior to the start of each game, the Lottery or its authorized representative shall distribute to each retailer an initial supply of tickets in the quantity established by the Director Lottery and the retailer, based on the retailer's anticipated volume of sales, along with an invoice payable as specified in the next monthly statement.
  - 2. For any subsequent delivery of tickets for each game, the net dollar value of all tickets distributed to a retailer shall be paid to the Lottery. Instant ticket packs issued to the retailer will be billed 45 days after the pack has been acti-

vated or after 85% of winning tickets in the pack have been validated, whichever comes 1st.

- a. Within seven days of receipt of the next monthly statement for those retailers not paying by electronic transfer of funds.
  - b. As specified in the next monthly statement for retailers paying by electronic transfer of funds.
3. Within 60 30 days following prior to the announced end of each instant game, the Lottery or its authorized representative shall collect unsold full packs of tickets in the possession of each retailer, including any full packs of tickets and 1 partial pack of tickets per retailer cash register. The Lottery shall credit to the retailer the net dollar value of any unsold tickets full packs collected by the Lottery within 60 days following the announced end of the instant game. All opened partial packs of tickets shall remain in the possession of the retailer and may be sold prior to the end of 180 day redemption period following the announced end of game.
4. The retailer shall follow a payment schedule established by the Lottery for payment of all amounts due according to the statement or invoice provided by the Lottery. The amount due to the Lottery by a retailer shall be paid by in the form of a personal or company check, cashier's check, money order, sight draft, certified check or electronic transfer of funds. If a retailer's payment is returned to the Lottery due to insufficient funds or any other reason, the retailer may be required by the Director to pay the amount due in the form of a cashier's check, money order, sight draft, or certified check at the time of each delivery. If the amount due to the Lottery by a retailer is not paid on or before the due date, the Director may withhold further delivery of tickets to the retailer. Retailers are responsible for depositing funds in a timely manner into the bank account on file with the Lottery.
- a. The retailer must provide the Lottery with an EFT authorization showing a valid bank account number from the which the amounts due the Lottery will be transferred.
  - b. The retailer must notify the Lottery of any bank account changes 10 days prior to the effective date of the change.
  - c. If a retailer's payment is returned to the Lottery for insufficient funds or any other reason, the retailer must deliver a certified check, cashiers check, money order, or make a direct deposit to the Lottery before the next payment is due.
    - i. The Director may require the retailer to pay the amount due in the form of a cashiers check, money order, sight draft or certified check at the time of each future delivery of tickets.
    - ii. The Director may require the retailer to post a bond in the amount of 4 times the average monthly liability. If the surety bond lapses, the retailer must deposit with the Lottery cash or other security in an amount equal to the lapsed security bond within 5 business days of the retailer's receipt of written notification by the Lottery.
    - iii. The Director may pick up the retailer's current inventory of tickets and withhold further delivery of tickets.
    - iv. The Director may suspend, revoke, or deny renewal of the retailer's license to sell Lottery products.



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- B. Retailer's compensation. Each retailer shall be entitled to a commission of ~~6 1/2%~~ six percent of the price of each instant lottery ticket it sells.
- C. ~~In addition to the compensation specified in R19-3-206(B), payment of up to 1/2% incentive on the price of each ticket sold shall be paid to retailers who meet the specifications established by the Director.~~
- C. ~~Ticket sales. All instant game ticket sales are final and no ticket returns are accepted.~~
- D. ~~Unaccounted and stolen tickets.~~
  - 1. ~~Tickets in an "activated" status unaccounted for by a retailer; regardless of the reason, shall be declared considered sold to the retailer. A credit will not be given to the retailer for stolen or unaccounted tickets.~~
  - 2. ~~The claimant of any winning ticket shall disclose the location where the claimant obtained the ticket.~~
  - 3-2. ~~The Lottery shall hold prize money in escrow pending the findings of an investigation by the appropriate law enforcement agency, when the claimed ticket for that prize is reported stolen or lost by a retailer.~~

**R19-3-207. On-line Game Requirements**

- A. Ticket sales requirements. A retailer shall ~~execute all selling On-line Lottery purchases and games shall issue On-line Lottery tickets using its authorized terminal in accordance with the Act and this Chapter.~~
  - 1. ~~Tickets accepted by the retailer as returned tickets and which cannot be resold shall be deemed owned by the retailer.~~
  - 2. ~~If a ticket is voided as prescribed in R19-3-401(C)(3), the retailer shall refund the ticket price to the ticket holder.~~
  - 3. ~~A retailer shall not sell a ticket or combination of tickets to any person or entity which would guarantee such purchaser a win.~~
  - 4. ~~A retailer shall not permit the use of facsimiles of selection slips, copies of selection slips, or other materials that are inserted into the terminal's selection slip reader that are not printed or approved by the Lottery. Plays may only be entered manually using the lottery terminal key-pad or touch screen or by means of a selection slip provided by the Lottery and hand-marked by the player.~~
- B. Ticket claims prize validation and payment requirements. A retailer shall provide ~~claim prize winner validation and payment services to any Lottery claimant regardless of where the ticket was purchased. The retailer shall post the winning numbers and any bonus number immediately following the selection and communication of the numbers and keep them posted for at least 3 consecutive calendar days following their selection. The retailer shall validate and pay all winner prizes, up to and including \$599, provided that all the ticket validation criteria in R19-3-401(H)(I) has been satisfied and a proper validation ticket, which is an authorization to pay, has been issued by the terminal. Winner prizes may be paid by cash, business check or money order.~~
- C. Terminal location.
  - 1. An On-line Lottery terminal shall be located at a site approved by the Lottery within the retailer's place of business and shall not be moved from that site without approval from the Lottery prior to the move.
  - 2. The Lottery may require that the terminal be located on or in a kiosk or other structure provided by the Lottery.
  - 3. The retailer shall be responsible for installation of and monthly payments for the electrical service and for installation of telephone facilities to the terminal location, in accordance with the specifications established by the Lottery. ~~The monthly data line charges will be assessed the~~

- retailer if retailer sales of Lottery products are less than the required minimums established in R19-3-204.
- 4. ~~If any action by the retailer causes an order to be placed with the providing telephone company to correct or relocate service beyond the initial installation of the terminal, the retailer shall be responsible for the charges incurred. A statement of charges and a copy of the telephone bill associated with those charges will be provided to the retailer.~~

- D. Terminal conversion.
  - 1. If needed, the Lottery shall modify its On-line Lottery system by:
    - a. Changing terminals, equipment or accessories;
    - b. Converting to another On-line system.
  - 2. Each retailer shall assist the Lottery to the extent reasonable and practical to accomplish the modifications in a timely and economical fashion, recognizing that the equipment is the property of the Lottery or its On-line contractor.
- E. Terminal operation. Each retailer shall have its On-line Lottery terminals available for the sale, validation, cancellation, and cashing of On-line Lottery tickets at all times while the ~~Lottery's on-line system is active and the retailer's business is open, except that no retailer shall be required to cash On-line tickets on Sundays.~~
- F. ~~The Arizona Lottery will not be held liable for damages of any and all kinds due to failure of any on-line lottery terminal interruption or termination of on-line terminal operations.~~
- F.G. Terminal care. Each retailer shall at all times:
  - 1. Operate the On-line terminal, associated equipment, and accessories only in the ordinary course of its On-line Lottery business and only in accordance with the requirements established by the Lottery;
  - 2. Exercise diligence and care to prevent failures, malfunctions, and accidents to the terminal and other property of the Lottery or its contractors for On-line operations.
- G.H. Terminal maintenance. Each retailer shall:
  - 1. Keep the On-line Lottery terminal, associated equipment, and accessories ~~clean, orderly and in good condition;~~
  - 2. Replace ribbons and ticket stock in the terminal as required;
  - 3. Minimize terminal downtime by:
    - a. Notifying the Lottery or its On-line contractor immediately of any and all terminal failures, malfunctions, damages, or accidents;
    - b. Making the terminal available for repairs, adjustments, or replacement at all times during the retailer's regular business hours.
- H.I. Terminal supplies. Each retailer shall:
  - 1. Order and utilize On-line Lottery supplies, including but ~~not limited to,~~ ribbons, ticket stock, and ~~claim and settlement forms selection slips exclusively from the Lottery or its On-line designated contractor;~~
  - 2. Maintain a sufficient inventory of On-line Lottery supplies to avoid an out-of-stock situation;
  - 3. ~~Receive, at no cost, supplies furnished by the Lottery.~~
- I.J. Retailer training. Each retailer shall:
  - 1. ~~Participate in On-line Lottery training courses and follow-up instruction, which may take place at a retailer's place of business training provided by the Lottery in the operation of on-line terminals and sale of Lottery products;~~
  - 2. ~~Ensure that all employees operating the On-line Lottery business attend the training courses and follow-up instruction selling Lottery products or operating Lottery on-line terminals are properly trained in these areas and~~

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have access to all materials provided by the Lottery relating to the sales and promotion of Lottery products and the operation of Lottery equipment;

3. ~~Assume responsibility~~ Be responsible for:
  - a. Any compensation payable to employees for participation in the Lottery training courses and instruction;
  - b. All other costs associated with employee training;
4. Provide all employees operating the On-line Lottery equipment with copies of the procedures manuals, bulletins, and technical materials which are furnished to the retailer by the Lottery or its On-line contractor.

**J.K.** Retailer compensation. Each retailer shall:

1. Retain a commission of ~~6 1/2%~~ six-percent of the price of each On-line ticket it sells, less the price of any voided tickets;
2. ~~Provide a settlement statement to the Lottery each week. The settlement statement shall include the following information:~~
  - a. ~~Gross revenue from the sale of On-line Lottery tickets;~~
  - b. ~~All cancellations and prize winnings paid out by the retailer.~~

**L.** In addition to the compensation specified in R19-3-207(K), payment of up to ~~1/2%~~ incentive on the price of each ticket sold shall be paid to retailers who meet the specifications established by the Director.

**M.** On-line ticket sales shall be paid for in the following manner:

- 3.1. Pay to the Lottery each Friday the amount due from the sale of its On-line Lottery tickets for the 7-day period ending at the close of business on the previous Saturday. The amount due means the retailer's gross revenue, less any voided tickets, prize winnings paid out by the retailer, and the retailer's sales commission. ~~If a retailer fails to make payment as required by the Lottery, the Director is authorized to summarily inactivate the retailer's On-line Lottery terminal.~~
2. The amount due to the Lottery shall be paid by electronic transfer of funds. Retailers are responsible for depositing funds in a timely manner into the bank account on file with the Lottery.

- a. The retailer must provide the Lottery with an EFT authorization showing a valid bank account number from the which the amounts due the Lottery will be transferred.

- b. The retailer must notify the Lottery of any bank account changes 10 days prior to the effective date of the change.

3. If a retailer's payment is returned to the Lottery for insufficient funds or any other reason, the retailer must deliver a certified check, cashier's check, money order, or make a direct deposit to the Lottery before the next payment is due.

- a. The Director may summarily inactivate the retailer's On-line Lottery terminal.

- b. The Director may require the retailer to post a bond in the amount of 4 times the average monthly liability. If the surety bond lapses, the retailer must deposit with the Lottery cash or other security in an amount equal to the lapsed security bond within 5 business days of the retailer's receipt of written notification by the Lottery.

- c. The Director may suspend, revoke, or deny renewal of the retailer's license to sell on-line and other Lottery products.

**R19-3-208. Compliance Investigations**

**A.** The retailer shall comply with all provisions of the Act and this Chapter. The Lottery has the discretion to conduct inspections to verify compliance and, if necessary order an audit or investigation of the business for validation.

**B.** Investigation of premises. Each retailer shall allow investigations during the retailer's regular business hours by authorized Lottery investigators to determine whether the retailer is complying with the provisions of the Act and this Chapter.

**C.** The retailer shall keep all invoices, records, bills and other papers and documents relating to the purchase, sale, and validation of Lottery products for 3 years. Such records and papers shall be kept in such conditions of storage as to be easily accessible to the Lottery authorized investigator for examination or audit.